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CF/WOK

BEFORE THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

Writ Petition No. 3542/2003.

PETITIONER : Smt. Dropadi Devi,
Wife of Late Shri S.P.Singh,
Aged about 50 years,
R/o Korea Collery,
Distt. Korea (C.G.).

// VERSUS //

RESPONDENTS : 1. The State of Chhattisgarh,
Through the Secretary,
Department of Transport,
D.K.Bhawan, Raipur (C.G.).

2. The Incharge Transport Flying Squad, Ambikapur.

3. The Regional Transport Officer Bilaspur (C.G.).

P.R. No. 3343/03
Presented by Shri Santosh Chouhan
dated 29.10.03

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

A.F.R.

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

WRIT PETITION NO. 3542 OF 2003

Smt. Dropadi Devi

-Versus-

State of Chhattisgarh & others

O R D E R

POST FOR 9/2-02-2004

Sd/-
L.C. Bhadoo
Judge

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

WRIT PETITION NO. 3542 OF 2003

Smt. Dropadi Devi

-Versus-

State of Chhattisgarh & others

Petitioner by Shri B. K. Rawat, Advocate.

Respondents No. 1 to 3 by Shri Sanjay K. Agarwal, Deputy Advocate General.

ORDER

(Passed on 24. February, 2004)

As per Justice L. C. Bhadoo.

1. Under Article 226/227 of the Constitution of India the petitioner who is registered owner of Bus No. C.G. 16-ZA/0130 has filed this writ petition challenging the seizure memo dated 18.10.2003 and for grant of exemplary cost of Rs. 1,00,000/- for illegal seizure of the vehicle.

2. Brief facts giving rise to filing of this writ petition are that the petitioner is carrying on transport business on the strength of stage carriage permit granted by the Transport Authority. The petitioner is holding regular permit No. 758-B/98 on the route Chirmiri to Bachra Podi via Budhripara and Ratanpur. The regular permit was expired on 7.7.2003 and the renewal application is pending. During the pendency of the application for regular permit the petitioner obtained temporary permit for the month of August and September, 2003. However, on 30th September 2003 the petitioner submitted an application to the R.T.O. Bilaspur informing that the petitioner is not willing to take temporary permit for the month of October, 2003 for the reason that the vehicle requires repairs, copy of the application is Annexure P/3. The petitioner had also deposited the motor vehicle Tax amounting Rs. 8000/- for the month of October 2003 on 10.10.2003, copy of the challan is Annexure P/4.

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3. On 18.10.2003 the flying squad of the transport department seized the vehicle which was under repairs for the reason that the vehicle was not covered with the permit nor the driver was having licence. The vehicle was seized under the provisions of Section 207 of the Motor Vehicles Act, 1988 and Section 16(3) of the Motoryan Karadhan Adhiniyam, 1991(which will be referred hereinafter 'the Act 1991). A copy of the seizure memo is Annexure P/5. No assessment order has been passed by the Taxing Officer nor any demand notice has been issued, therefore, the seizure of the vehicle is patently illegal and without jurisdiction. Neither any notice has been issued to the petitioner nor any opportunity of hearing been offered. Under section 66(3) of the Motor Vehicles Act, 1988 no permit is required for the vehicle for the purpose of its repairs, therefore it has been prayed that the seizure memo be quashed, the vehicle be released and exemplary cost be granted in favour of the petitioner.

4. Return has been filed on behalf of the respondents No. 1 to 3 in which it has been mentioned that the petitioner ought to have availed the remedy available under the provisions of Section 20 of the Act 1991 as this is the alternative and efficacious remedy available to the petitioner. Most of the facts are admitted by the respondents, however they have mentioned in their return that on 18.10.2003 the vehicle was found plying without permit upon which the seizure memo was prepared and copy of the panchnama is filed as Annexure R/2. On inspection it was found that the vehicle was carrying 14 passengers. Copy of list of passengers is filed as Annexure R/3. Copy of the statements of three passengers is also filed as Annexure R/4 and the vehicle is kept in the premises of the police station Khadgvan. Therefore the petition be dismissed.

5. I have heard Shri B. K. Rawat learned counsel for the petitioner and learned Deputy Advocate General Shri Sanjay K. Agarwal for the Respondents No. 1 to 3.

6. It is an admitted position that on 18.10.2003 there was no permit with the petitioner. The petitioner's claim is that the vehicle was under repairs therefore the temporary permit for the month of October, 2003 was not obtained by the petitioner and an intimation to that effect was submitted on 30th September,

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2003 itself. On the other hand as per the respondents' stand on 18.10.2003 the vehicle in question was found carrying 14 passengers from Chirmiri to Bachrapodi, tickets were not issued to those passengers therefore the vehicle was seized by the flying squad of the transport department, the seizure memo and panchnamas were prepared, statements of the passengers were recorded. Since the vehicle was plying without permit therefore they imposed a tax of Rs. 50,000/-.

7. Learned counsel for the petitioner argued as the vehicle was seized under section 207 of the Motor Vehicles Act, 1988 therefore as per the proviso to section 207 instead of seizing the vehicle; the officers of the flying squad ought to have taken into possession the documents of the vehicle. On the other hand learned Deputy Advocate General argued that the vehicle was seized under section 16(3) of the Act, 1991 as the vehicle was found carrying passengers without valid permit and payment of tax.

8. As per the scheme of the Act in the normal course the tax is payable in advance. As per Section 3 a tax shall be levied on every motor vehicle used or kept for use in the State at the rate specified in the First Schedule. As per Section 4(2) a transport vehicle of which the certificate of registration is current shall, for the purpose of this Act, be presumed to have been in use or kept for use, notwithstanding the expiry of the certificate of fitness in case of transport vehicle. Section 8 requires every owner to file a declaration with the taxation authority and after the receipt of such declaration the tax is determined. Rule 5 of the Motoryan Karadhan Rules, 1991 framed in exercise of the powers conferred by Section 24 of the Act provides that the declaration shall be in Form B for a transport vehicle. A perusal of Form B appended to the Rules shows that the owner of the vehicle has to give the particulars of permit held by him in that Form. Thus the terminus a quo, the point of beginning, for determination of the tax under the Act is the filing of the declaration under Section 8 of the Act and the condition precedent for doing so is the valid permit under Section 66(1) of the Motor Vehicles Act, 1988. In the absence of this permit the normal procedure for assessment

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and payment of the tax in advance for a transport vehicle breaks down.

9. Entry IV (g) in the First Schedule provides for levy of tax on 'motor vehicle plying without permit.' That is the extraordinary mode of taxation. There is in-built penalty. Explanation (1) appended to the Schedule provides that the number of passengers which a vehicle is permitted to carry shall in the case of a motor vehicle plying for hire or reward without permit be the maximum number of persons or passengers which the vehicle may be permitted to carry, if a permit was granted. That means the tax in such a case is payable in accordance with the entire registered capacity irrespective of the number of passengers in the vehicle. In the present case capacity of the vehicle was 50 passengers therefore Rs. 1000/- per passenger as per admissible tax, Rs. 50,000/- was imposed as tax.

10. Section 8(4) of the Act provides that where the owner fails to file a declaration required under sub-section (1) or (2) the taxation authority may, on the basis of information available with him and after giving to the owner an opportunity of being heard, by an order in writing determine the amount of tax payable by such owner suo motu and intimate the same to him in such form and within such time as may be prescribed. Section 15 provides for service of demand notice by the taxation authority.

11. Section 16 lays down the power of entry, seizure and detention of motor vehicles in case of non-payment of tax. Sub-sections (3) and (4) of Section 16 are as under:

(3) The Taxation Authority or any officer authorized by the State Government in this behalf may if he has reason to believe that a motor vehicle has been or is being used without payment of tax, penalty or interest due, seize and detain such motor vehicle and for this purpose take or cause to be taken any step as may be considered proper for the temporary safe custody of such motor vehicle and for the realization of tax due.

(4) Where a motor vehicle has been seized and detained under sub-section (3), the owner or the person incharge of such vehicle may apply to the Taxation Authority or any officer authorized in this behalf by the State Government together

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with the relevant documents for the release of the vehicle and if such authority or officer after verification of such documents, is satisfied that no amount of tax is due in respect of that vehicle, may by an order in writing release such vehicle."

12. Rule 17 of the Rules, 1991 is relevant in this context and that is as under:-

"17. **Procedure for seizure and detention of motor vehicle in case of non-payment of tax** – (The memorandum of seizure and the order of seizure and detention of motor vehicle under sub-section (3) of Section 16 of the Act shall be made in Form U-1 and U-2 respectively, and copies thereof shall be served on the persons from whose possession or control such motor vehicle has been seized and detained)

(2) The motor vehicle seized and detained shall be kept in safe custody at the nearest Police Station or at any other place at the discretion of the officer seizing the motor vehicle or the Taxation Authority.

(3) The vehicle detained shall be released by the officer or the Taxation Authority seizing it on payment of tax, penalty and interest due."

13. The conjoint reading of Sections 8(4), 15 and 16 of the Act and Rule 17 of the Rules goes to show that the seizure and detention of the vehicle shall continue until the tax on the vehicle which was found plying without permit is paid. There is no provision for release of the vehicle without payment of tax as per Entry IV(g) of the First Schedule. As per the provision the tax must be paid in advance before the vehicle is brought on the road. Duty has been caste upon the Taxation Authority to determine the tax as early as possible quickly as per Section 8(4) after hearing the owner and serve the demand notice on him. During this process the Taxation Authority will also decide the disputed questions of fact raised by the owner. There is a provision of appeal to the prescribed authority under section 20 of the Act.

14. As far as the authority cited by learned counsel for the petitioner A.I.R. 1993 M.P. 29(Mahendra Arora & another Vs. The Transport Commissioner, M.P. Gwalior & others) is concerned para-29 in which it has been held that when a public service

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vehicle is found plying for hire or reward and is used actually for transport of passengers without a valid permit issued in accordance with law authorizing it to engage in that trade, the owner of the vehicle shall be liable to pay tax in terms of item (g) of Entry IV of the First Schedule. It has been observed that for avoiding a seizure under Section 16(3) of the Act two conditions of obtaining a permit and advance payment of tax contemplated under the Act are to be satisfied. The legal requirement is, first there shall be a permit duly obtained and then particulars of that duly filled in the declaration while tendering payment. It has been further stated that it is obvious that "for the realization of tax due" seizure and detention can be made under Section 16(3) as that is its object and purpose and tax levied and payable in terms of sub-item (g) is also "tax due". The seizure must be in conformity with the provisions of the Act and the Rules.

15. The other decision of the Division Bench is Naveen Vs. State of M.P. reported in 1994 MPLJ 681 in which it has been held that the taxable event is use of a vehicle as a public service vehicle. The satisfaction is that of the Taxation Authority. Such satisfaction is implicit in the act of enquiry leading to seizure and assessment. It has been further held that Section 16 of the Act enable the petitioner to approach the authority and satisfy it with the records or otherwise that there has been no non-payment of tax due. Section 20 provides for an appeal to the Appellate Authority, subject of course to the condition the tax should be cleared. The Appellate Authority has jurisdiction as well as a duty to go into the contentions raised by an appellant and arrive at a proper and correct decision on the basis of the material available before it. This appears to be an effective, efficacious and alternative remedy. The disputed questions of fact arising in the case cannot be determined in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

16. In the light of the above decisions if we look into the facts of the present case, the vehicle in question was seized on 18.10.2003 while carrying 14 passengers from Chirmiri to Bachra Podi and the seizure memo was prepared as required under law, the list of passengers was also prepared and the statements of the passengers were recorded. The seizure was reported to the

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Taxing Authority. As per the petition of the petitioner during that period the vehicle was under repairs so no permit was obtained and a false case has been prepared against the petitioner. Whereas on the other hand the respondents have produced the seizure memo, copy of the statements of the passengers and said that at the relevant time the bus in question was carrying 14 passengers, without issuing tickets to the passengers. Therefore, as has been held in the case of Naveen (supra) disputed questions are involved in this petition. The petitioner's claim is that the permit was not obtained, as the vehicle requires repairs whereas the respondents' case is that the vehicle was being plied without permit.

17. In view of the above, the proper course for the petitioner was to approach the appropriate taxation authority as envisaged in section 16 of the Act, 1991 and ought to have produced all the documents and asked for adjudication to the concerned authority in accordance with law. But instead of approaching the concerned authority the petitioner has preferred to file this writ petition before this Court and the petitioner has suppressed this fact that the vehicle in question was found carrying passengers by the flying squad of the transport department on 18.10.2003. Therefore, this Court cannot invoke the extra ordinary jurisdiction to adjudicate upon these disputed questions of facts, the petitioner has effective and equally efficacious remedy to approach the concerned authority and thereafter if she is aggrieved then may file an appeal under section 20 of the Act.

18. In view of the above discussion I am of the opinion that there is no merit in this petition, which is liable to be dismissed and is dismissed.

Sd/-
L.C. Bhadoo
Judge

Thakur